UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

mk

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/324,368	06/02/99	NAGAOKA K	MORJ-2516

IM52/0201

YOUNG & BASILE PC
3001 WEST BIG BEAVER ROAD
SUITE 624
TROY MI 48084-3107

EXAMINER	
MULLIS,J	
ART UNIT	PAPER NUMBER
1711	6

DATE MAILED: 02/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/324,368	Applicant(s) Nagaoka et al.
	Examiner Jeffrey Mullis	Group Art Unit 1711

☒ Responsive to communication(s) filed on *Oct 26, 2000*.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *three* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-11* is/are pending in the application.

Of the above, claim(s) *3 and 8-11* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1, 2, and 4-7* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☒ received in Application No. (Series Code/Serial Number) *08/715,900*.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). *2*

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Serial No. 08/715,900 does not support a supercool index range of 0.3-0.6 but rather only discloses a supercool index of greater or equal to 0.4. Furthermore, the parent case does not disclose the production of materials other than lactic acid polymer. Therefore the effective filing date of all claims under consideration, namely 1, 2 and 4-7 is that the actual filing date of the instant case, namely June 2, 1999.

Applicant's election without traverse of Group I, claims 1-7 and the species of claim 2, reading on claims 1, 2 and 4-7 in Paper No. 10-26-00 is acknowledged.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nagaoka et al., any one of Japanese Patents 9-95851, 9-95849 or 9-95850.

The patents disclose the production of non-woven fabrics of polylactic acid in which polylactic acid is extruded at a drafting rate of 1000-6000 M/M and then cooled. Note that applicants' specification discloses examples in which such a process utilizing extrusion rates of 1000-2500 gives materials with applicants' characteristics. Although there are no specific examples with extrusion rate of 1000, end points are generally considered anticipatory since end points by definition are specifically named. In any case, applicants' specification discloses that extrusion rates as high as 3000 are capable of giving applicants' characteristics while at least two of the patents ('851 and '849) disclose extrusion rates very close to this, i.e. 3500. Also these two patents also disclose extrusion rates of 800 in their Examples. For these reasons, applicants' characteristics reasonably appear to be inherent.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re

Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

In a Continuation-in-Part (CIP), a foreign priority more than one year before the CIP becomes a valid reference under 35 U.S.C. § 102(b). Note in this regard In re Ruscetta and Jenny, 118 USPQ 101 (CCPA 1958) and In re Lukach, Olson and Spurlin, 169 USPQ 795 (CCPA 1971) and In re Hafner, 161 USPQ 783 (CCPA 1969) in this regard.

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nagaoka et al. (EP 0765959).

Nagaoka et al. disclose the production of a lactic acid polymer containing non-woven fabric (Abstract) produced by extruding lactic acid polymers at 1200-3000 M/M and cooling them. Note page 12 lines 29-39 in this regard and that patentees explicitly disclose that the supercool index may be 0.4. Note claim 35 of the patent where a crystallizing agent (i.e. nucleating agent) is added.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re

Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

In a Continuation-in-Part (CIP), a foreign priority more than one year before the CIP becomes a valid reference under 35 U.S.C. § 102(b). Note in this regard In re Ruscetta and Jenny, 118 USPQ 101 (CCPA 1958) and In re Lukach, Olson and Spurlin, 169 USPQ 795 (CCPA 1971) and In re Hafner, 161 USPQ 783 (CCPA 1969) in this regard.

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Philippe et al. (FR 2725731).

Philippe et al. disclose a polylactic acid web (Abstract) produced by extrusion of polylactic acid at 15-30 meters per second (i.e. 900-1800 meters per second) followed by cooling. Note the Example at the bottom of page 6 in this regard.

Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Khan et al.

Khan et al. disclose the production of a web (note the paragraph bridging pages 71 and 72) which is produced by extruding polylactic acid then quenching. Note Table II.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties

which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc
January 8, 2001

Jeffrey Mullis
Primary Examiner
Art Unit 1711